

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

SHELLY PERRY,

Plaintiff,

v.

CIRCLE K STORES, INC.

Defendant.

2017 JUL 19 P 1:09

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

CASE NO. 3:17-cv-483

JURY TRIAL REQUESTED

COMPLAINT

COMES NOW the Plaintiff, Shelly Perry, by and through her undersigned counsel of record, and hereby doth complain against the above-named Defendant, as set forth herein-below.

I. JURISDICTION & VENUE

1. Plaintiff Perry files this Complaint, institutes these proceedings, and invokes the jurisdiction of this Court under and by virtue of 28 U.S.C. §§ 1331 and 1334 (a)(4), as an action arising under the Act of Congress known as Title VII of the Civil Rights Act of 1964, (42 U.S.C. § 2000(e) et seq.), as amended by the 1991 Civil Rights Act, 42 U.S.C. 1981(a), 42 U.S.C. § 1201, et seq., and the Americans with Disabilities Act ("ADA")(Pub. L. No. 101-336) to obtain equitable relief, the costs of suit, including reasonable attorneys' fees, and damages suffered by the Plaintiff, due to the Defendant's discrimination against Plaintiff.

2. Plaintiff Perry filed a charge of disability discrimination with the EEOC in Birmingham on September 6, 2016. Plaintiff received a right-to-sue on April 27, 2017, giving Plaintiff the right to pursue this claim in federal court for 90 days after said receipt. (Exhibit A).

3. Venue is proper in the Northern Division of the Middle District of Alabama, since the alleged discriminating action of Defendant occurred in Lee County, Alabama.

II. PARTIES

4. The named Plaintiff, Shelly Perry (hereinafter “Plaintiff” or “Plaintiff Perry”), is a citizen of the United States and a resident of Lee County, Alabama. Plaintiff is over the age of nineteen years.

5. The Defendant, Circle K Inc. (hereinafter “Defendant” or “Defendant Circle K”), is a global corporation operating with most countries. At all times relevant to this complaint, Plaintiff was employed, and continues to be employed, by Defendant.

III. STATEMENT OF FACTS

6. Plaintiff is a fifty-four year old female of African American descent, and she is of sound mind and relatively sound body, except for certain disabilities described hereinafter that do not interfere with her ability to do her job.

7. Plaintiff began working on August 20, 2003 for Circle K Stores Inc., which is a service station and convenience store in Opelika, Alabama. Plaintiff has always done good work and has never received any write-ups during the entire thirteen years she worked there.

8. Plaintiff avers that she always had a habit of being courteous with customers, something which Plaintiff prided herself on. Plaintiff also avers that she received a letter from the Mayor of Opelika for assisting a customer with a special situation.

9. Plaintiff avers that due to recent chronic kidney disease, which got worse and caused her to have surgery in September, 2015, Plaintiff started taking dialysis treatments on March 28, 2016 a fact well known to the management at Circle K Stores Inc., namely Store Manager Donna (last name unknown) and Kay Branch, District Manager. Plaintiff also had to have surgery on her abdomen, to install a catheter in her body, to help her cope with the dialysis

for her treatment. Plaintiff also experienced painful gout in her foot, for which she had to receive steroids and pain medication.

10. Due to Plaintiff's physical condition, the Store Manager Donna advised Plaintiff that she would not have to do any heavy lifting, or enter the cooler. Plaintiff avers that she was not as limited as Donna thought, and could have done virtually any job in the store except for extremely heavy lifting, and that limitation would not have been with Plaintiff long.

11. Unfortunately, upon the initiative of Donna, but with the message coming from Kay Branch, Plaintiff avers that she was informed that she was not being "friendly enough" and that she was "not meeting their standards of customer service". Plaintiff was therefore terminated on Friday, August 26, 2016. Plaintiff believes the reasons given her for her termination were pretextual, and that the real reason for her termination was that she was somehow deemed "disabled", due to her above-described, long-term disability, thus making Plaintiff unable to fulfill the necessary duties and functions of her job.

12. Plaintiff avers that she has been wrongfully discriminated against, due to her long-term or chronic kidney disease she is suffering, and due to the necessity to receive dialysis, as well as treatment for the gout condition in her foot. Plaintiff also avers that, as a result, she has been a victim of disability discrimination, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. In addition, Plaintiff has lost valuable income, suffered mental anguish, and incurred attorneys' fees.

IV. PLAINTIFF'S CAUSE OF ACTION

DISABILITY DISCRIMINATION UNDER THE AMERICANS WITH DISABILITIES ACT

13. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 12 above, the same as if more fully set forth herein, and further avers that the Defendant failed to

accommodate Plaintiff's disability by willfully, and/or maliciously, denying Plaintiff a reasonable accommodation, due to Plaintiff's physical handicap, as above-described.

14. Plaintiff also avers that Defendant's discrimination against her, due to the alleged disability, or due to an incorrect perception by Defendant of a disability on the part of Plaintiff, violated the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., prohibiting handicap discrimination.

15. Plaintiff has lost wages and benefits, and suffered extreme mental anguish as a result of Defendant's discrimination against Plaintiff Perry, due to Plaintiff's disability and/or Defendant's incorrect perception of a disability on the part of the Plaintiff.

16. Plaintiff avers that she has pursued and exhausted her administrative remedies.

PRAYER FOR RELIEF

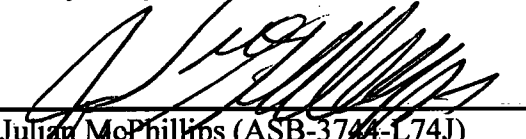
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that this Court grant the following relief:


- a) Judgment declaring Plaintiff was discriminated against by the Defendant, due to Plaintiff's disability, or the incorrect perception by the Defendant that Plaintiff was disabled;
- b) An order reinstating the Plaintiff into her job and awarding back-pay for all hours missed from work due to the Defendant's discrimination.
- c) An award of all court costs and reasonable attorneys' fees, including those incurred for seeking administrative relief;
- d) An award of compensatory damages, including for mental anguish, to which Plaintiff may be entitled;
- e) An award of punitive damages; and

- f) Such further, other and different relief as the Court may deem appropriate and necessary.

Respectfully submitted this ____ day of July, 2017.

Shelly Perry, Plaintiff



Julian McPhillips (ASB-3744-L74J)
Counsel for Plaintiff

Chase Estes (ASB-1089-F44L)
Counsel for Plaintiff

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JURY DEMAND

Plaintiff hereby requests trial by jury on all issues so triable.



OF COUNSEL